

Kennecott Utah Copper Corporation asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's decision denying Kennecott's request to reopen S. H.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. H. filed a workers' compensation claim for injuries to her neck, left shoulder and left arm allegedly caused by driving a truck for Kennecott. Kennecott denied liability. After evidentiary proceedings, Judge La Jeunesse found that Ms. H.'s work at Kennecott was the cause of her injuries. The Labor Commission subsequently affirmed that award.

Kennecott then filed a motion to reopen the claim on the grounds Ms. H. and her treating physician had withheld information about Ms. H.'s involvement in an earlier traffic accident. Kennecott argued it was this previous traffic accident, rather than her work at Kennecott, that caused Ms. H.'s injuries.

Judge La Jeunesse denied Kennecott's request to reopen Ms. H.'s claim. Kennecott now asks the Appeals Board to consider the matter.

FINDINGS OF FACT

It is undisputed that, on September 16, 1988, while employed by Salt Lake City, Ms. H. was involved in a work-related automobile accident. As a result of this accident, Ms. H. received medical care for several months and was diagnosed with injuries to her neck, right shoulder and right arm resulting in an 8% permanent impairment. She filed a claim against the other driver's insurance carrier and received a settlement of several thousand dollars.

Approximately four years after her traffic accident, Ms. H. filed a claim for workers' compensation benefits against Kennecott, alleging neck injuries from repetitive jarring and jolting as she drove truck at Kennecott's open-pit mine. The claim listed the health care providers she had seen during the previous 15 years, including Dr. Nelson. Ms. H. reported that Dr. Nelson had treated her for "whiplash when I worked for SLC Street Dept."

Kennecott responded to Ms. H.'s claim with a general denial of liability. Kennecott then served interrogatories on Ms. H. which, among other questions, asked her to identify all health care providers she had seen in the last ten years. Ms. H. again identified Dr. Nelson and stated he had first treated her "for whiplash when a vehicle hit my city truck from behind as I worked for Salt Lake City Street Department. I received chiropractic medical care for 7 days and a prescription."

Kennecott also took Ms. H.'s deposition. To Kennecott's direct question whether she had ever had medical treatment for her headaches, left shoulder or left arm prior to November 2001. Ms.

H. testified she received no such medical treatment. She did not report the rear-end collision, the resulting injuries, or the lengthy medical treatment she had actually received for those injuries.

Following customary procedures in workers' compensation claims, Kennecott provided Dr. Nelson with a release from Ms. H. and requested copies of all Ms. H.'s medical records. When Dr. Nelson failed to comply with this request, Kennecott obtained a subpoena from the Commission ordering Dr. Nelson to submit Ms. H.'s records. In response to this subpoena, Dr. Nelson provided some, but not all, of Ms. H.'s medical records. In particular, he did not provide records of the treatment he had provided Ms. H. after her 1988 traffic accident.

Ms. H.'s claim proceeded to hearing. Based on the evidence presented, Judge La Jeunesse and, on review, the Labor Commission concluded that Ms. H.'s current complaints of cervical injury were caused by her work at Kennecott and, therefore, compensable. However, the testimonial evidence and documentary medical records available to Judge La Jeunesse and the Commission at that time did not include information about Ms. H.'s preexisting cervical injuries from the 1988 traffic accident.

In 2004 Ms. H. filed another claim for additional workers' compensation benefits against Kennecott. In the course of these proceedings, Kennecott submitted another request for Ms. H.'s medical records to Dr. Nelson. However, by this time Dr. Nelson had retired and the request for records was processed by someone else in his office. At this point, for the first time, Kennecott received all Ms. H.'s records, including records detailing the nature and severity of her cervical injuries from the 1988 traffic accident.

DISCUSSION AND CONCLUSIONS OF LAW

In seeking to reopen Ms. H.'s claim, Kennecott argues that the testimonial evidence and documentary medical records available when Judge La Jeunesse and the Commission made their first decisions failed to include relevant information about Ms. H.'s preexisting cervical injuries from the 1988 traffic accident. The question before the Appeals Board is whether this information was improperly withheld from consideration and, if so, whether that justifies reopening the claim.

The Appeals Board notes that Ms. H. did disclose some limited information about her 1988 traffic accident and injuries in her initial application and her answers to Kennecott's interrogatories. However, while under oath during her deposition, she failed to fully and truthfully answer Kennecott's questions regarding prior medical treatment, which should have elicited an account of the 1988 injuries.

Even more troubling is Dr. Nelson's failure to comply with the Labor Commission's direct order to provide all of Ms. H.'s medical records. Kennecott was clearly entitled to these records, both for consideration by Kennecott's own medical consultants and for submission to the Commission's medical panel.

Section 63-46b-8(2) of the Utah Administrative Procedures Act authorizes the Appeals Boards, acting as "presiding officer" at this stage of this adjudicative proceeding, to take "appropriate measures necessary to protect the integrity of the hearing." In considering whether the conduct of Dr. Nelson and Ms. H. has tainted this proceeding so as to require corrective action to protect the integrity of the hearing process, the Appeals Board looks for guidance to the Utah

Workers' Compensation Act itself. In particular, §34A-2-802(1) of the Act instructs the Appeals Board to exercise its authority to insure that the underlying purposes of the Act are accomplished:

The commission, the commissioner, an administrative law judge, or the Appeals Board, is not bound by the usual common law or statutory rules of evidence, or by any technical or formal rules of procedure, other than as provided in this section or as adopted by the commission The commission may make its investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

The Appeals Board also notes that §34A-2-420(1) of the Act grants the Commission continuing jurisdiction over each case and specifically authorizes the Appeals Board "from time to time to modify or change a former finding or order of the commission." In *United Airlines v. Industrial Commission*, 175 P.2d 752, 754 (Utah 1946), the Utah Supreme Court discussed the scope of the Commission's continuing jurisdiction:

This court has interpreted these sections to mean that the Industrial Commission should not reopen a case merely for the purpose of hearing cumulative or corroborative evidence; but when new evidence is available, or new issues have arisen, then their power to reconsider the case is not curtailed. (Citations omitted.)

Applying the foregoing principles to the circumstances of this case, the Appeals Board concludes that Ms. H.'s failure to correctly answer Kennecott's questions was compounded by Dr. Nelson's unexcused failure to comply with the Commission's order for production of Ms. H.'s medical records. As a result, Kennecott was deprived of relevant information it was entitled to have. Such information may have a significant impact on Ms. H.'s right to receive workers' compensation benefits for her alleged injury while working at Kennecott. The Appeals Board further concludes that principles of fundamental fairness, the need to protect the integrity of the adjudicatory process, and the requirement that the Appeals Board act to carry out the fundamental purposes of the workers' compensation system require reopening Ms. H.'s claim so that this new evidence can be properly considered.

The Appeals Board remands this matter to Judge La Jeunesse to reopen the evidentiary proceedings on Ms. H.'s claim for submission of additional medical evidence and, as appropriate, for referral of such evidence to the Commission's medical panel. After the evidentiary proceedings are complete, Judge La Jeunesse will issue a new decision on Ms. H.'s claim based upon the complete record. Any party dissatisfied with Judge La Jeunesse's decision may seek review by the Labor Commissioner or Appeals Board.

ORDER

The Appeals Board grants Kennecott's motion for review, sets aside Judge La Jeunesse's decision, and remands this matter to Judge La Jeunesse for further proceedings consistent with this decision. It is so ordered.

Dated this 26th day of May, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch